**International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada *and* Metromedia, Inc. and National Association of Broadcast Employees and Technicians, AFL-CIO.** Case 31-CD-222

February 23, 1982

## DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Metromedia, Inc., herein called the Employer, alleging that International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, herein called IATSE, violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees represented by IATSE rather than to employees represented by National Association of Broadcast Employees and Technicians, AFL-CIO, CLC, herein called NABET.

Pursuant to notice a hearing was held before Hearing Officer Robert H. Lachmund, Jr., on June 30 and July 13, 1981. All parties appeared at the hearing and were afforded a full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer, IATSE, and NABET filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board makes the following findings:

### I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer is a Delaware corporation engaged in the operation of 6 television stations and 12 radio stations in the States of New York, California, Pennsylvania, Maryland, Michigan, Illinois, Minnesota, Kansas, and Ohio, and in the District of Columbia. The Employer's principal place of business is located in New York, New York. The Employer's annual gross revenues derived from operating said radio and television stations is in excess of $500,000.

Accordingly, we find that the Employer is an employer within the meaning of Section 2(2) of the Act; it is engaged in commerce within the meaning of Section 2(6) and (7) of the Act; and it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, and National Association of Broadcast Employees and Technicians, AFL-CIO, CLC, are labor organizations within the meaning of Section 2(5) of the Act.

### III. THE DISPUTE

#### A. *Background and Facts of the Dispute*

The Employer owns and operates television station KTTV in Los Angeles, California. Its operations are divided into several departments, including the news department and the engineering department. The employees in the former department are represented by IATSE. The employees in the latter department are represented by NABET.

The history of this dispute began in 1975 when the Employer purchased and began utilizing for news-gathering work a portable hand-held electronic videotape camera, commonly referred to as the minicam. It assigned all news-gathering work involving the minicam to cameramen represented by IATSE. Prior to the introduction of the minicam, these same employees had performed essentially all news-gathering work for the Employer with film cameras.

After the Employer announced its intention to assign the work of operating the minicam for news-gathering purposes to the IATSE-represented employees, NABET claimed that employees it represented should be assigned the work in question. The NABET employees have traditionally operated the large, studio-type electronic cameras that KTTV used in programming. They usually work in the studio, although occasionally they have been dispatched to various remote locations to cover live such prescheduled events as sporting events or election returns, or to cover live ongoing news stories such as disasters. NABET contended that employees it represented were entitled to the work because of their experience in operating electronic cameras. IATSE, however, asserted that the work should be assigned to employees it represented because of their expertise in news gathering.

As a result of IATSE's threat to take economic action against the Employer should the work in question be assigned to NABET, a 10(k) proceeding was initiated by the Employer and a hearing was held in March, April, and May 1976. Because of their special skill as photojournalists, as well as considerations of economy, efficiency, and employer preference, the Board concluded that the work was properly assigned to the IATSE-represented cameramen.[1]

On June 6 and again on November 6, 1978, the Employer assigned certain of its IATSE cameramen to cover election eve news at the headquarters of various political candidates. The cameramen used minicams, which are capable of both videotaping and transmitting live audio and visual signals. On the nights in question, the cameramen performed both live broadcasting and videotaping. The actual live air time amounted to no more than a total of a few minutes. NABET subsequently filed grievances, claiming the work involving the live coverage. A similar grievance was filed by NABET following the election coverage on June 3 and on November 4, 1980. The Employer contended that the work in question was covered by the Board's earlier 10(k) award and filed an unfair labor practice charge against NABET because of its attempt to compel arbitration of the grievances.

The Board dismissed the resulting 8(b)(4)(A) complaint, holding that its previous 10(k) award did not clearly address the allocation of live broadcasting work and therefore the parties were not prohibited from negotiating on the subject.[2] Following the Board's decision, IATSE, by letter dated April 24, 1981, threatened economic action against the Employer should it reassign the live election coverage work to employees represented by NABET. That letter gave rise to the present proceeding.

### B. *The Work in Dispute*

The work in dispute concerns the operation of portable hand-held electronic cameras for live transmission of election eve coverage.

### C. *The Contentions of the Parties*

The Employer assigned the disputed work to cameramen represented by IATSE, claiming that the assignment falls within the Board's prior 10(k) award. The Employer states that in the prior case the Board had before it evidence that the minicam was capable of being used for live as well as taped coverage, and was aware that NABET-represented employees had been used in the past for live election coverage. It therefore contends that the Board's award was made without limitations or distinctions between the use of the minicam for live or taped news-gathering work. In the alternative, the Employer argues that, even assuming the disputed work was not encompassed within the Board's original award, a review of the relevant factors establishes that live election night coverage was properly assigned to employees represented by IATSE based on considerations of economy, efficiency, and skills involved.

Specifically, the Employer contends that, if the work assignment is changed, it will have to utilize two separate camera crews for election eve coverage: One represented by IATSE for minicam videotaping and the other represented by NABET for minicam live transmission. It argues that, under the existing assignment, IATSE-represented employees can and do perform both functions utilizing the same minicams. As for skills, the Employer points out that the photojournalistic skills of the IATSE cameramen were a critical factor in the Board's previous 10(k) award in favor of those employees. It thus contends that, since the use of the minicam for live broadcasting does not in any way require a different skill than is required of the photojournalist in using the minicam for taping a news story, such skills support its assignment in the instant dispute.

IATSE agrees with the assignment for the same reasons espoused by the Employer.

NABET claims that the assignment to operate the minicam for live election coverage is not the same as an assignment to gather news on videotape, and that the current work dispute was not resolved by the first 10(k) case. It contends that its engineers are entitled to the disputed work, citing its certification, its collective-bargaining agreement with the Employer, and the fact that prior to June 6, 1978, live election eve coverage was performed exclusively by NABET engineers. NABET has moved to quash the notice of hearing in the present case, claiming that there is no evidence of 8(b)(4)(D) activity, and further claiming that the parties have agreed upon a method for the voluntary adjustment of the dispute.

### D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon

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[1] *International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Metromedia, Inc.)*, 225 NLRB 785 (1976) (hereinafter referred to as Metromedia I).

[2] *National Association of Broadcast Employees and Technicians, AFL-CIO, CLC (Metromedia, Inc.)*, 255 NLRB 372 (1981).

a method for the voluntary adjustment of the dispute.

At the hearing, counsel for NABET moved to quash the notice of hearing, claiming that no jurisdictional dispute exists for the following reasons: (1) there is no evidence of 8(b)(4)(D) activity, as the letter sent to the Employer by IATSE is insufficient to establish that the Employer was threatened or coerced by IATSE; and (2) there is an agreed-upon method for settling the dispute.

As noted above, after the Employer utilized certain of its IATSE cameramen for live election coverage, NABET filed grievances protesting the assignment. Thereafter, NABET filed a complaint in a United States district court for an order to require the Employer to arbitrate the work assignment dispute, and subsequently moved for summary judgment in said court. In response, counsel for IATSE sent a letter to the Employer threatening economic action against the Employer should it reassign the disputed work. The letter stated:

> In the event that the assignment is changed on the work involved, specifically the operation of the Minicam on election night from the I.A.T.S.E., then the I.A.T.S.E. will take action including strike and other economic action against Metromedia.

Thereupon, the Employer filed an unfair labor practice charge under Section 8(b)(4)(D) of the Act.

NABET claims that IATSE made no real threat to engage in economic action if the Employer changed its original assignment of the work, as IATSE-represented employees had already been assigned to perform the work. However, the Board has found that an 8(b)(4)(D) charge was supported under similar circumstances, where a union informed an employer that it would take economic action if the employer reassigned the work pursuant to a rival union's claim.[3] Based on IATSE's letter and the record as a whole, we find that an object of IATSE's action was to force the Employer to continue to assign the disputed work to individuals represented by IATSE. We are satisfied that there is reasonable cause to believe that IATSE has violated Section 8(b)(4)(D).

NABET further contends that a tripartite arbitration proceeding, which it anticipates the United States district court will order, constitutes a voluntary method of adjustment binding on all the parties. The proceeding to compel arbitration is currently pending in the United States district court. All three parties are litigants in said proceedng. NABET's contention is based upon its assumption that the court will issue an order for tripartite arbitration. Even if the court had already ordered a tripartite arbitration proceeding, we are of the opinion, as the Board stated in its earlier decision,[4] that court-ordered arbitration is less than a voluntary method of settling the dispute in light of IATSE's opposition to that forum. Therefore, we find no merit in this contention.[5]

It is clear from the foregoing, and we find, that at the time of the instant dispute there did not exist any agreed-upon or approved method for the voluntary adjustment of the dispute to which all the parties of the dispute were bound.

After considering the contentions of the parties and the evidence with respect thereto, we find that the Board is not precluded from making a determination in this proceeding, tha: there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred, and that the dispute as described above is properly before the Board for determination under Section 10(k) of the Act.

### E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[6] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[7]

The following factors are relevant in making the determination of the dispute before us:

#### 1. Collective-bargaining contracts and certifications

In the prior 10(k) case, the Board held that the certifications of both Unions were of little value in determining the merits of the dispute since both certifications predated the use of the minicam.[8] This holding is equally applicable to the instant work dispute.

Both Unions presently have collective-bargaining agreements with the Employer. Section 1.07 of IATSE's contract provides: "The jurisdiction of

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[3] *International Photographers Local 659, affiliated with International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States & Canada, AFL-CIO (King Broadcasting Company)*, 216 NLRB 860 (1975).

[4] *Metromedia I, supra* at 788.

[5] Furthermore, neither of the collective-bargaining agreements which the Employer has with IATSE and with NABET provides for tripartite arbitration. And neither Union is bound by the other's arbitration provision in their respective contracts. See *Providence Stereotypers Union No. 53 (The Providence Journal Company)*, 216 NLRB 535 (1975).

[6] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[7] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

[8] *Metromedia I, supra* at 788.

the employees covered hereunder shall be all news and news documentary work produced by and for KTTV News Department. . . ." The agreement is in effect from 1979 to 1982, and is entitled "KTTV News Department Agreement."

Section 6.02 of NABET's contract states that its trade jurisdiction includes the "operation . . . of (i) technical and engineering operational equipment for broadcasting. . . ." NABET contends that the minicam when used for live broadcasting is equipment within that language. However, even assuming that this contention is correct, any such agreement between NABET and the Employer would be inconsistent with the agreement with IATSE, which provides that IATSE's jurisdiction "shall be all news and news documentary work. . . ."

We are of the opinion that the respective contracts for both IATSE and NABET are, at best, conflicting, and we find that they are of little value in determining this dispute.

2. Area, craft, and industry practice

In its prior 10(k) decision the Board stated that area, craft, and industry practice was of little help in assigning the disputed work, since there was a mixed practice in the industry. The Board found that the major networks assign the operation of the minicam to NABET engineers, but that this practice is offset by the practice of nine independent stations on the west coast, where IATSE cameramen operate the minicam.[9] In the instant proceeding there was no new testimony offered on this factor, and therefore we find it of little help in assigning the disputed work.

3. Employer practice

Prior to June 6, 1978, live election eve coverage was performed by NABET-represented employees utilizing large fix mount cameras and, in some instances, large hand-held cameras which were the precursor of the electronic minicam. Prior to June 6, 1978, IATSE-represented employees were only involved in videotaping of election eve events and did not perform live transmission functions.

Thus, while the Employer's past practice was to assign live election eve coverage to NABET-represented employees, such practice did not include operation of the minicam, which is the equipment involved in this dispute. Accordingly, we find that the Employer's past practice is of little help in determining this dispute.

4. Job impact

The current assignment of the disputed work to IATSE employees results in the loss of some work to employees represented by NABET. However, this loss is *de minimis* as it represents no more than a few hours on one to two evenings every other year.[10]

If NABET engineers were assigned the disputed work, there would be no loss of work for the IATSE cameramen. This is because said cameramen are entitled to perform the minicam videotaping on election eve.

Thus, we find that this factor does not favor an award of the disputed work to either group of employees.

5. Economy and efficiency

Under the current work assignment, IATSE-represented employees operate the minicam for both videotaping and live transmission of election eve coverage. The Board's prior 10(k) award established that IATSE-represented employees are entitled to perform the former.[11] In light of this, it is clear that if the work asignment is changed the Employer will have to utilize two separate camera crews for election eve coverage: An IATSE crew for minicam videotaping, and a NABET crew for minicam live transmission. In that the actual live air time amounts to no more than a total of a few minutes, the inefficiency of having a separate crew for live coverage is self-evident. We therefore conclude that the factors of economy and efficiency favor an award of the disputed work to employees represented by IATSE.

6. Skills

The special photojournalistic skills of the IATSE news cameramen was a critical factor in the Board's original determination.[12] The Board stressed that the fast-breaking news events for which the Employer planned to utilize the minicam required that the cameraman operating the minicam possess such skills. In the instant case, the record establishes that photojournalistic skills are

[9] *Metromedia I, supra* at 789.

[10] On the four nights that the Employer utilized the minicam for live election eve coverage, the cameramen worked at most a 7-hour shift. On said nights, the Employer assigned two IATSE employees to operate the minicam and one NABET engineer to monitor the live transmissions. The latter assignment was made because IATSE personnel do not have the skills to insure a proper signal acceptable for broadcast. Thus, NABET contends, under the present assignment, three persons are necessary for live election coverage, whereas only two would be needed if they were both NABET engineers. Accepting this argument as correct, it becomes apparent that the current work assignment results in NABET employees losing only a 7-hour shift on two evenings every other year, or a total of 7 hours a year.

[11] *Metromedia I, supra* at 791.

[12] *Metromedia I, supra* at 790.

of equal importance regardless of whether the minicam is being used for taping or live broadcasting. As such, we conclude that the skills possessed by employees represented by IATSE favor an award of the work in dispute to them.

### 7. Employer preference

After consideration of all the relevant factors, the Employer assigned the work of operating the minicam for live transmission of election coverage to employees represented by IATSE. The record indicates that the Employer is satisfied with the results of the assignment and maintains a preference for an assignment of the work to IATSE personnel.

### Conclusion

Upon the record as a whole, and after full consideration of all the relevant factors involved, we conclude that employees represented by IATSE are entitled to the disputed work, and we shall determine the dispute in their favor. Where skills, economy, and efficiency favor an assignment of the work to IATSE-represented employees, and where the Employer is satisfied with and continues to prefer the assignment, we must conclude that an assignment of the work to employees represented by IATSE is warranted.[13]

In making this determination, we are assigning the disputed work to employees employed by the Employer and represented by International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

## DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute:

Employees of Metromedia, Inc., Los Angeles, California, who are currently represented by International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada are entitled to perform the work of operating portable hand-held electronic cameras for live transmission of election eve coverage.

[13] In view of this conclusion, we find it unnecessary to decide whether or not the instant work in dispute falls within the Board's prior 10(k) award in *Metromedia I*.